

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RIVER BIRCH, LLC

AI # 32219

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

* **Settlement Tracking No.**
* **SA-SE-24-0026**
*
* **Enforcement Tracking No.**
* **SE-CN-22-00341**
*
*
* **Docket No. 2024-0119-DEQ**
*

SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between River Birch, LLC (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a limited liability company that owns and/or operates a facility located in Avondale, Jefferson Parish, Louisiana (“the Facility”).

II

On October 13, 2022, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. SE-CN-22-00341 (Exhibit 1).

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures

and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FOUR THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$4,250.00), of which One Thousand Five Hundred Seventy-Nine and 21/100 Dollars (\$1,579.21) represents the Department's enforcement costs, in settlement of the claims set forth in this Settlement Agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty and this Settlement Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This Settlement Agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this Settlement Agreement in any action by the Department to enforce this Settlement Agreement.

VIII

This Settlement Agreement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and Settlement Agreement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

IX

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Jefferson Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this Settlement Agreement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XI

Payment is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Settlement Agreement is voidable at the option of the Department. The Respondent shall provide its tax identification number when submitting payment. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department

of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form attached hereto.

XII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement Agreement.

XIII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

RIVER BIRCH, LLC

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at _____.

NOTARY PUBLIC (ID # _____)

(stamped or printed)


LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Aurelia S. Giacometto, Secretary

BY: _____
Jerrie "Jerry" Lang, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: 

Jerrie "Jerry" Lang, Assistant Secretary

JOHN BEL EDWARDS
GOVERNOR



CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

OCT 13 2022

CERTIFIED MAIL (7020 3160 0000 9230 1196)
RETURN RECEIPT REQUESTED

RIVER BIRCH, LLC
c/o Patrick S. McGoey
Schonekas, Evans, McGoey & McEachin, LLC
Agent for Service of Process
909 Poydras Street, Suite 1600
New Orleans, LA 70112

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. SE-CN-22-00341
AGENCY INTEREST NO. 32219**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **RIVER BIRCH, LLC (RESPONDENT)** for the violations described therein.

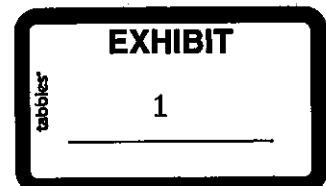
Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Brock Bonvillain at (225) 219-1423 or Brock.Bonvillain@la.gov.

Sincerely,

Angela Marse
Administrator
Enforcement Division

AM/BRB/brb
Alt ID No. P-0321-R2-M1; RG-51-11374
Attachment



**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**RIVER BIRCH, LLC
JEFFERSON PARISH
ALT ID NOS. P-0321-R2-M1; RG-51-11374**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

*	
*	
*	ENFORCEMENT TRACKING NO.
*	
*	SE-CN-22-00341
*	
*	AGENCY INTEREST NO.
*	
*	32219
*	

**CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **RIVER BIRCH, LLC (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates a facility known as River Birch Landfill located at 2000 South Kenner Road in Avondale, Jefferson Parish, Louisiana. The facility is a Type I/II landfill permitted to accept industrial waste, residential waste, commercial waste, non-hazardous incinerator ash, properly packaged asbestos, and properly packaged and certified noninfectious medical waste. The Respondent is registered as a waste tire generator with the Department and is assigned facility identification number RG-51-11374. The landfill is currently operating under Standard Permit P-0321-R2-M1 issued on May 17, 2019.

II.

On or about April 18, 2022 and June 8, 2022, the Department issued Warning Letters SE-L-22-00341 and SE-L-22-00459 to the Respondent for areas of concern identified during inspections conducted on or about December 13, 2021, March 29, 2022, and April 26, 2022, respectively. On or about July 12, 2022, the Respondent submitted a response to the Department.

III.

On or about December 13, 2021, March 29, 2022, and April 26, 2022, the Department conducted inspections at the above referenced facility to determine the degree of compliance with the Act and the supporting Regulations. While the investigation by the Department is not yet complete, the following violations were noted during the course of the inspections:

- A. The Respondent failed to have guard posts firmly anchored outside the well slab for all groundwater monitoring wells, in violation of LAC 33:VII.805.A.3.c.ii. Specifically, two (2) of the four (4) guard posts for groundwater monitoring well MW-3 were not anchored and lying on the ground during the December 13, 2021 inspection. A follow-up inspection conducted on or about March 29, 2022 and a response dated April 18, 2022 revealed the fallen guard posts have been reinstalled and are firmly anchored.
- B. The Respondent failed to apply and maintain daily and interim cover material in all areas of the landfill, in accordance with Volume 3, Attachment 35, Section 2.6 of the approved permit application, and LAC 33:VII.711.B.2.a.ii.(b), in violation of Conditions 1 and 2 of Standard Permit P-0321-R2-M1, LAC 33:VII.711.B.2.f, and LAC 33:VII.901.A. Specifically, the Department conducted inspections at the facility which revealed the following:
 - i. The December 13, 2021 inspection revealed a leachate seep to the soil that was flowing down the slope of Cell 40 and had formed a leachate pool in Cell 41, erosion channels on the western slope of Cell 38 and Cell 39 and on the southern slope of Cell 39, Cell 40, and Cell 41, as well as, exposed waste in Cell 27, Cell 38, Cell 39, and Cell 40, and large tears and exposed waste in the areas where alternate daily cover was applied. A follow-up inspection conducted on or about

- March 29, 2022 and a response dated April 18, 2022 revealed adequate placement of cover was applied to the areas noted herein.
- ii. The April 26, 2022 daily cover inspection, conducted prior to the commencement of daily operations at 5:00 AM, revealed exposed solid waste, including but not limited to household waste, putrescible waste, aluminum, plastic, and paper, as well as, the inadequate placement of daily cover located in several separate areas in immediate proximity to the working face and tipper. Additionally, all exposed wastes were observed in areas that had not been disturbed since the prior day's operations. On or about July 12, 2022, the Respondent submitted a response that stated tarp removal operations began approximately a few minutes before the inspection commenced. Additionally, the response stated the equipment used to remove the tarps had to roll over the areas where the Enviro-Cover was used, which likely caused the Enviro-Cover to be pulled away from the edge of the waste. The response also stated that the facility increased the frequency of random internal daily cover inspections, as well as, operators have been instructed to verify that cover overlaps the edge of the working face.
- C. The Respondent failed to apply cover to minimize blowing paper and litter in all areas of the landfill, in accordance with Volume 3, Attachment 35, Section 2.6 of the approved permit application and LAC 33:VII.711.B.2.a.iv, in violation of Conditions 1 and 2 of Standard Permit P-0321-R2-M1, LAC 33:VII.711.B.2.f, and LAC 33:VII.901.A. Specifically, a large amount of windblown litter was observed throughout the facility during the December 13, 2021 inspection. A representative of the Respondent stated that the facility is currently having trouble hiring day laborers to perform litter patrols. A follow-up inspection conducted on or about March 29, 2022 and a response dated April 18, 2022 revealed adequate placement of cover was applied to minimize blowing paper and litter at the facility.
- D. The Respondent failed to prevent the disposal of waste tires in the landfill, in accordance with Volume 3, Attachment 35, Section 2.4.2 of the approved permit application, in violation of Conditions 1 and 2 of Standard Permit P-0321-R2-M1, LAC 33:VII.10509.A, and LAC 33:VII.10537.A. Specifically, two (2) waste tires were

observed disposed on the slope of Cell 40, and one (1) waste tire was observed disposed on the west slope of Cells 38 and 39 during the December 13, 2021 inspection. A follow-up inspection conducted on or about March 29, 2022 and a response dated April 18, 2022 revealed all the waste tires observed at the facility were being stored in the facility's covered waste tire storage container.

- E. The Respondent failed to provide adequate cover to exclude water from waste tires, failed to provide vector and vermin control, and/or failed to provide means to prevent or control standing water in the storage area for all waste tires, in violation of LAC 33:VII.10519.I. Specifically, the December 13, 2021 inspection revealed six (6) uncovered waste tires at the facility. Three (3) of the uncovered waste tires were placed on the ground around the waste tire collection container, and the other three (3) waste tires were placed in the waste tire collection container without a cover. A follow-up inspection conducted on or about March 29, 2022 and a response dated April 18, 2022 revealed all the waste tires observed at the facility were being stored in the facility's covered waste tire storage container.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Solid Waste Regulations and Standard Permit P-0321-R2-M1.

II.

To ensure, immediately upon receipt of this **COMPLIANCE ORDER**, that all areas of exposed waste receive daily and/or interim cover, in accordance with Volume 3, Attachment 35, Section 2.6 of the approved permit application, LAC 33:VII.711.B.2.a, and Standard Permit P-0321-R2-M1. The Respondent shall also ensure daily and interim cover are maintained in a manner to minimize leachate seepage and pooling at the facility.

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order

Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: **Brock Bonvillain**
Re: **Enforcement Tracking No. SE-CN-22-00341**
Agency Interest No. 32219

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: **Hearings Clerk, Legal Division**
Re: **Enforcement Tracking No. SE-CN-22-00341**
Agency Interest No. 32219

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Division of Administrative Law (DAL) Procedural Rules. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Brock Bonvillain at (225) 219-1423 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

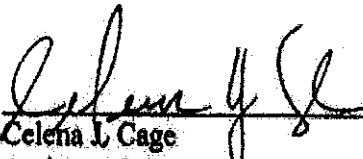
IV.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached "**CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE**" form. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this **NOTICE OF POTENTIAL PENALTY** portion but no later than ninety (90) days of achieving compliance with the **COMPLIANCE ORDER** portion. The Respondent must include a justification of the offer. **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

V.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**
is effective upon receipt.

Baton Rouge, Louisiana, this 15th day of October, 2022.



Celena J. Cage
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Brock Bonvillain



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL COMPLIANCE
 ENFORCEMENT DIVISION
 POST OFFICE BOX 4312
 BATON ROUGE, LOUISIANA 70821-4312

CONSOLIDATED COMPLIANCE ORDER &
 NOTICE OF POTENTIAL PENALTY
 REQUEST TO CLOSE

Enforcement Tracking No.	SE-CN-22-00341	Contact Name	Brock Bonvillain
Agency Interest (AI) No.	32219	Contact Phone No.	(225) 219-1423
Alternate ID Nos.	P-0321-R2-M1; RG-51-11374		
Respondent:	River Birch, LLC	Facility Name:	River Birch Landfill
	c/o Patrick S. McGoey Schonekas, Evans, McGoey & McEachin, LLC	Physical Location:	2000 South Kenner Road
	Agent for Service of Process		
	909 Poydras Street, Suite 1600 New Orleans, LA 70112	City, State, Zip:	Avondale, LA 70094
		Parish:	Jefferson

STATEMENT OF COMPLIANCE

STATEMENT OF COMPLIANCE	Date Completed	Copy Attached?
A written report was submitted in accordance with Paragraph IV of the "Order" portion of the COMPLIANCE ORDER.		
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:		

SETTLEMENT OFFER (OPTIONAL)

(check the applicable option)

<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart 1.Chapter 7.
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-22-00341), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-22-00341), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$_____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this NOTICE OF POTENTIAL PENALTY portion but no later than ninety (90) days of achieving compliance with the COMPLIANCE ORDER portion. <ul style="list-style-type: none"> • Monetary component = \$_____ • Beneficial Environmental Project (BEP) component (optional) = \$_____ • DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.
<input type="checkbox"/>	The Respondent has reviewed the violations noted in CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-22-00341) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

CERTIFICATION STATEMENT

I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.

Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date
MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:		
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Brock Bonvillain		